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Towards clean public procurement:
How the second cycle of the UNCAC review process
can limit corruption in public tenders

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- In the forthcoming cycle of the UNCAC review process, **special attention should be given to** establishing **integrity standards for public procurement** systems to achieve Article 9.
- **Transparency and access to public procurement data enables citizens to take action to improve public procurement systems** and creates an important basis for the realisation of Article 9 and Article 13.
- **Citizen's initiatives play a key role in improving the integrity of public procurement systems**. A growing number of citizens' initiatives around the world are focusing on the integrity of public procurement systems (especially in Europe). The UNCAC and its review cycle should serve as a tool to spread good practice in this area.

The UN Convention against Corruption (UNCAC) contains a well-defined obligation on signatory states to establish systems of public procurement based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption that maintain high standards of transparency and objectivity in proposal selection, and are thus corruption-resistant and competitive. Article 9 of the UNCAC is not only clear and categorical, but also quite precise for an act of international law. The systems it describes should specifically be:

1. Widely accessible and informative about the objects of procurement, selection procedures, assessment and execution of public contracts
2. Enabling for the effective monitoring of the implementation of procurement procedures and the execution of contracts
3. Based on proposal assessment criteria that are objective
4. Designed to provide market participants with adequate time to submit proposals
5. Created to include training and adequate preparation of public officers responsible for the administration of public procurement

With this transparency and access to public procurement data, civil society (NGOs, media, experts, academia, etc.) can not only act to improve public procurement systems, but also become effective watchdogs and execute civic control over this crucial area where the public and private sectors meet.

There is potential in this area to encourage the involvement of innovative members of the public and private sectors, and in particular civil society. In the context of the upcoming UNCAC implementation review, considering the diverse private sector and civil society initiatives in this area, there is great potential for cooperation between the evaluating bodies from the UN and civil society organisations (as mentioned in Article 63(4)(c)). Increased emphasis on this area in the upcoming review cycle would support the development and stabilisation of diverse actions aimed at preventing corruption in public procurement. The following (and by no means exhaustive) list of anti-corruption initiatives focused on public tenders illustrates non-state developments in this area, which should be supported through effective implementation of UNCAC regulations.

Overview of selected European anti-corruption initiatives on public procurement

For the past few years, the **European Union (EU) has developed various systems to control abuse in public tenders** related to expenditures within the EU. Some are exclusively internal and intended for use by European Commission officers, OLAF (the European Anti-Fraud Office) and national institutions managing structural funds. The newest of these is the ARACHNE system, developed by DG Employment. It is a large database fed into by member states. It registers information about tenders and incorporates external data from ORBIS and the World Compliance databases, which include information and profiles on subjects and individuals, against whom criminal proceedings have been held (in particular related to corruption, money-laundering and terrorism). Through this system, institutions responsible for expenditures from EU funds can check bidders and take action to minimise the risk of abuse. Unfortunately, only administration employees can access the database, so with some exceptions, e.g. for academic purposes, it is closed to citizens.

The EU has also inspired other public procurement anti-corruption activities, for example by financing academic and watchdog projects implemented by civil society organisations. One such initiative is the DigiWhist project (full name Digital Whistleblower) implemented by a consortium of academic centres and non-governmental organisations across the EU member states, with several partners from outside the EU. Its objective is to collect and analyse information about legal frameworks for public procurement, as well as, more importantly, to establish a unified database on the public procurement market in Europe, based on information from particular countries. It is also supposed to be accompanied by tools to help citizens in particular countries to independently identify risks and conduct watchdog activities (e.g. at the local government level), as well as help them signal abuse and cooperate with the media and law enforcement agencies.

Another example of a large international project is the pilot implementation of the Integrity Pact tool, initiated in the beginning of 2016 with support from the European Commission. It involves a three-party agreement between the contracting parties, bidders and civil society organisations interested in monitoring a particular tender (e.g. one that is highly significant to society or the local community). Specific commitments are made to maintain transparency and prevent corruption, which go deeper than the standard conditions resulting directly from public procurement legislation. Within the experimental project, implemented in seven member states, the European Commission

would like to assess whether such pacts might be a good tool to protect the financial interests of the community.

Meanwhile, grass-root initiatives have emerged in some European countries. These include public procurement monitoring systems focused on detecting potential abuse using publicly available data and based on the "red flag" concept: identifying indicators of potential corruption or other types of abuse (conspiracies, wasteful management of contracting parties, lack of attention to procedures, disorganisation, etc.). **Such a system has existed in Croatia since 2014.** It was developed by local non-governmental organisation Partnership for Social Development, and contains a database updated in real time, where anyone can analyse announcements of public tenders posted by the national and local government institutions. The tool makes it possible to search for tenders that have unusually short deadlines for proposals, high security deposits or a small number of bidders. It is, therefore, possible to scrutinise particular contracting authorities and bidders, analyse their actions in the procurement market, and select those that are involved in risky practices. Moreover, the Croatian database is constantly used in other activities of the organisation, which runs an investigative journalism programme based on data, in which local journalists check how public funds are spent in their area and, if necessary, inform the public. Thus, a whole anti-corruption micro-social movement for transparency and fairness was established based on information about public procurements. tenders

Similar initiatives have been established in other European countries. In **Hungary**, a similar web portal exists, analysing announcements of public tenders, developed by two organisations: Transparency International Hungary and K-Monitor. **Slovakia** also has a portal with similar functionalities. In **Poland**, thanks to cooperation between the Stefan Batory Foundation and a private company Zamowienia 2.0 (Procurements 2.0) a portal will be developed to analyse the risk of abuse for particular procurements in real time, based on a specially designed statistical tool and data from the Polish public tenders information publishing system and the European Tenders Electronic Daily (TED).

A Hungarian think-tank, the Government Transparency Institute has also developed a tool for assessing risk in particular public tenders and analysing data from the whole market, based on a special index. This solution is based on the largest procurements published in the European TED and allows for the comparison of risk between countries (so far versions of the index have been developed for Hungary, Romania and Poland).

There are also international, civic platforms that network and help exchange experience between different organisations and individuals working for greater transparency in public procurement, such as the global initiative Open Contracting Partnership, which has developed standards on open data in contracting and assisted in developing an innovative public procurement integrity project with the Ukrainian Ministry of Economy and NGOs called Ukraine ProZorro (or East European TransparenCEE).

In response to this innovative work, some countries, most notably Slovakia, the Czech Republic and Croatia, are proactively improving their public procurement information platforms. They are becoming more aware of the value of opening and enriching these data sources and encouraging citizens to become effective contributors to the oversight of public procurement and in doing so counteract corruption.

The second cycle of the UNCAC implementation review is an opportunity to motivate signatory states to more effectively implement Article 9 and to cooperate more closely with non-governmental organisations, civil society and the private sector.

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